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No. 00-1584

IN THE
Supreme Court of the United States

WILLIAM SEABOLD, WARDEN,
Petitioner

versus

DEAN VINCENT,
Respondent

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Sixth Circuit

PETITIONER'S REPLY TO BRIEF IN OPPOSITION

ALBERT B. CHANDLER III
Attorney General of Kentucky

KENT T. YOUNG
Assistant Attorney General
Counsel of Record
Criminal Appellate Division
Office of the Attorney General
1024 Capital Center Drive
Frankfort, KY 40601-8204
(502) 696-5342

16 pp

QUESTIONS PRESENTED

I. WHETHER THE COURT OF APPEALS' UNEXPLAINED DECISION IN APPLYING LILLY V. VIRGINIA, 527 U.S. 116 (1999) RETROACTIVELY ON HABEAS REVIEW OF THIS CASE, WHICH BECAME FINAL FOUR YEARS EARLIER IN 1995, VIOLATES 28 U.S.C. SECTION 2254(d) AND WILLIAMS V. TAYLOR, 529 U.S. 362 (2000)?

II. WHETHER WILLIAMSON V. UNITED STATES, 512 U.S. 594 (1994) AUTHORIZES FEDERAL HABEAS COURTS TO REQUIRE RETROACTIVE APPLICATION OF THE FEDERAL RULES OF EVIDENCE IN STATE COURT TRIALS?

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PETITIONER'S REPLY TO BRIEF IN OPPOSITION

Comes the Petitioner, by counsel, and submits this reply to the brief in opposition.

CONSTITUTIONAL PROVISION AND STATUTE INVOLVED

The certiorari petition ultimately turns on the proper interpretation of the phrase "clearly established Federal law, as determined by the Supreme Court of the United States", contained in 28 U.S.C. §2254(d), to wit:

> An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim —
>
> (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
>
> (2) resulted in a decision that was based on an unreasonable determination of facts in light of the evidence presented in the State court proceeding.

ARGUMENTS

I. THE COURT OF APPEALS' UNEXPLAINED DECISION IN APPLYING LILLY V. VIRGINIA, 527 U.S. 116 (1999) RETROACTIVELY ON HABEAS REVIEW OF THIS CASE, WHICH BECAME FINAL FOUR YEARS EARLIER IN 1995, VIOLATES 28 U.S.C. SECTION 2254(d) AND WILLIAMS V. TAYLOR, 529 U.S. 362 (2000).

Federal-state comity interests, the literal language of 28 U.S.C. §2254(d), and the opinion in Williams v. Taylor, 529 U.S. 362 (2000) all demand that a reviewing federal habeas court identify and apply the United States Supreme Court precedent in existence at the time the relevant State court decision became final as a pre-condition to granting federal habeas corpus relief. The opinion in Vincent v. Seabold, 226 F.3d 681 (6th Cir. 2000), by failing altogether to satisfy this precondition to the granting of federal habeas corpus relief, presents the United States Supreme Court with a unique opportunity to focus on and address this question of great importance to federal and state courts alike.

Tellingly, the Respondent does not defend the decision, as written, in Vincent v. Seabold, 226 F.3d 681 (6th Cir. 2000). Rather, the Respondent attempts to supply a *post hoc* rationalization based on United States Supreme Court cases in existence at the time Dean Vincent's appeal became final on direct review in the Kentucky courts. In so doing, the Respondent implicitly recognizes the validity of the Petitioner's position.

28 U.S.C. §2254(d), as amended by the Anti-Terrorism And Effective Death Penalty Act (AEDPA), prohibits, in relevant part, a Federal court from granting federal habeas corpus relief with respect to a State court judgment "unless the adjudication of the claim . . . [in the State court] . . . resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." In Williams v. Taylor, 529 U.S. 362 (2000), the United States Supreme Court made clear that "§2254(d)(1) places a new constraint on the power of a federal habeas court to grant a state prisoner's application for a writ of habeas corpus with respect to claims adjudicated on the merits in state court." Id., 529 U.S. at 412; See also, Id., 529

U.S. at 403. In interpreting 28 U.S.C. §2254(d)(1) the Williams Court noted in relevant part:

> Throughout this discussion the meaning of the phrase "clearly established Federal law, as determined by the Supreme Court of the United States" has been put to the side. That statutory phrase refers to the holdings, as opposed to the dicta, of this Court's decisions as of the time of the relevant state-court decision. In this respect, the "clearly established Federal law" phrase bears only a slight connection to our Teague [Teague v. Lane, 489 U.S. 288 (1989)] jurisprudence. Id., 529 U.S. at 412.

The Respondent's attempt to characterize Lilly v. Virginia, 527 U.S. 116 (1999) as being "dictated by precedent existing at the time the defendant's conviction became final" begs the question presented for certiorari review in this case. [Brief in Opposition, p. 3, citing Teague v. Lane, 489 U.S. 288 (1989)]. The published decision in Vincent v. Seabold, supra, utterly fails to conduct any such analysis, or to recognize the necessity of conducting such an analysis. Rather, the published decision in Vincent v. Seabold applies Lilly v. Virginia, supra, directly to Vincent's case, even though *Lilly v. Virginia* was

decided years after Vincent's appeal on direct review in the State courts became final.

II. WILLIAMSON V. UNITED STATES, 512 U.S. 594 (1994) DOES NOT AUTHORIZE FEDERAL HABEAS COURTS TO REQUIRE RETROACTIVE APPLICATION OF THE FEDERAL RULES OF EVIDENCE IN STATE COURT TRIALS.

The brief in opposition effectively concedes that the Federal Rules of Evidence are not binding on the State courts, and that the analysis relevant to Vincent's case is a Confrontation Clause analysis. Williamson v. United States, 512 U.S. 594 (1994) does not authorize retroactive application of the Federal Rules of Evidence to State court trials. Indeed, the Williamson court expressly noted what it was not deciding in that Opinion:

> In light of this disposition, we need not address Williamson's claim that the statements were also made inadmissible by the Confrontation Clause, see generally *White v. Illinois*, 502 U.S. 346, 112 S.Ct. 736, 116 L.Ed.2d 848 (1992), and in particular we need not decide whether the hearsay exception for

declarations against interest is "firmly rooted" for Confrontation Clause purposes. Compare, e.g., *United States v. Seeley*, 892 F.2d 1, 2 (CA1 1989) (holding that the exception is firmly rooted), with *United States v. Flores*, 985 F.2d 770 (CA5 1993) (holding the contrary). We note, however, that the very fact that a statement is genuinely self-inculpatory--which our reading of Rule 804(b)(3) requires--is itself one of the "particularized guarantees of trustworthiness" that makes a statement admissible under the Confrontation Clause. See *Lee v. Illinois*, 476 U.S. 530, 543-545, 106 S.Ct. 2056, 2063-2064, 90 L.Ed.2d 514 (1986). We also need not decide whether, as some Courts of Appeals have held, the second sentence of Rule 804(b)(3)--"A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement" (emphasis added)--also requires that statements inculpating the accused be supported by corroborating circumstances. See, e.g., *United States v. Alvarez*, 584 F.2d 694, 701 (CA5 1978); *United States v. Taggart*, 944 F.2d 837, 840 (CA11 1991). (Id., 512 U.S. at 605).

Finally, the brief in opposition falsely asserts that "the Kentucky Supreme Court did not analyze or determine whether KRE [Kentucky Rules of Evidence] 804, as interpreted, violates the Federal Confrontation Clause and 18 (sic) U.S.C. §2254(d)". (Brief in Opposition, pp. 7-8). The Kentucky Supreme Court opinion[1] in the appeal of Vincent and a co-defendant noted in relevant part:

> As to appellants' Bruton [Bruton v. United States, 391 U.S. 123 (1968)] argument, it is true that generally a defendant's Sixth Amendment right to confrontation is violated when he is directly incriminated by a confession of a non-testifying co-defendant. Out-of-court statements may be presumed unreliable, but the presumption may be rebutted by appropriate proof. What may be unreliable in isolation may be probative when corroborated by additional evidence. Thus, a

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[1] The Petitioner is not asking this Court to undertake the fact-intensive review of the Kentucky Supreme Court's opinion. Rather, the Petitioner is seeking to have this Court vacate the opinion in Vincent v. Seabold and remand the case because the United States Sixth Circuit Court of Appeals has not conducted the appropriate analysis in the first instance. In other words, as a matter of law the result in Vincent v. Seabold is not supportable by the legal analysis set forth in the opinion.

literal interpretation of the confrontation clause is too extreme and societal interests of accurate fact finding requires harmonization with the confrontation provision.

* * *

The decision of the trial court as to the credibility and thus admissibility of the statement should not be disturbed on appeal absent any circumstances not disclosed in the record... Considering the totality of the circumstances and factors involved herein we find that the trial court did not err by allowing Detective Gaddie to testify regarding redacted portions of Kinser's confession.
(See also, pp. 10-11 of the United States Magistrate's Findings of Fact, Conclusions of Law and Recommendation in Vincent v. Seabold, a copy of which is contained in the Appendix to the Petitioner's Certiorari Petition).

CONCLUSION

WHEREFORE, the petition for a writ of certiorari should be granted; the United States Sixth Circuit Court of Appeals panel decision in Vincent v. Seabold, 226 F.3d 681 (6th Cir. 2000) should be vacated; and the case should be remanded to the United States Sixth Circuit Court of Appeals for consideration in light of relevant, clearly established Federal law as of the time the state court decision in Vincent's case became final on direct review.

Respectfully submitted,

ALBERT B. CHANDLER III
Attorney General of Kentucky

KENT T. YOUNG
Assistant Attorney General
Counsel of Record
Criminal Appellate Division
Office of the Attorney General
1024 Capital Center Drive
Frankfort, Kentucky 40601-8204
(502) 696-5342